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Summary record of the 1044th meeting

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the permanent missions of Member States from the observer missions of non-members; the Drafting Committee should bring out that distinction.

43. Mr. USHAKOV said he shared the Special Rapporteur's views on the importance that should be attached to the institution of permanent observer missions, for two main reasons. In the first place, the institution was developing and would develop further in future. Of course, the articles applied only to international organizations of a universal character, but, as was made clear in article 2, there was nothing to prevent them from applying to other international organizations which made wider use of the institution than did the organizations of a universal character. Secondly, there were no written rules on the matter, and that fact enhanced the importance of the series of articles on permanent observer missions, which seemed to be useful and necessary.

44. With regard to article 0, he drew the Commission's attention to paragraph 14 of its report on the work of its twenty-first session.¹¹ In his opinion, there was a close connexion between the definition of the term "permanent observer" and that of the term "permanent representative"; the terminology would obviously have to be standardized, taking into account the definition which would appear in article 1 of the draft. Like Mr. Ustor, he thought that a unified terminology should be adopted for the whole set of draft articles. With regard to the use of the term "*mission d'observateurs permanents*", some confusion had been created by the fact that the adjective "permanent" qualified, not the mission, but the observers themselves. In his opinion, it was the mission that should be described as permanent, and it might therefore be better to refer to "permanent missions of observers" or "permanent missions of observation" in article 0. The question was of considerable importance, for the articles on the legal status of permanent observers depended on the terminology used. He also endorsed the remarks made by Mr. Reuter and Mr. Rosenne on the drafting of article 0. The representative character of permanent observer missions could not be questioned, for that character was conferred on them by the very fact that they were sent by States.

45. Mr. RAMANGASOAVINA said that the Special Rapporteur had been confronted by the particularly difficult task of defining the legal status of representation which, by definition, was unofficial. A perusal of article 0 showed that the ambiguity of certain terms was due precisely to that difficulty. Thus, in sub-paragraph (a) of the article, confusion was caused by the use of the words "representative ... character", which had a very specific meaning; he thought that that confusion could be avoided by referring only to the "permanent character" of the mission, without mentioning its official character, which was implicit in the mere fact that it had been sent by a State. He agreed with Mr. Reuter's remarks on sub-paragraph (b), but thought it became comprehensible if read in conjunction with article 55 of the draft. It seemed to him, therefore, that there was some justifi-

cation for the wording proposed by the Special Rapporteur.

46. Mr. ALBÓNICO said he agreed with Mr. Rosenne that it was too soon for the Commission to discuss article 0 in detail. He was inclined to think that a permanent observer had a certain representative character, but the question of his powers and functions vis-à-vis the international organization was a different matter. Article 52, paragraph 1, stated that "The principal function of a permanent observer mission is to ensure the necessary liaison between the sending State and the Organization", while paragraph 2 stated that such missions might also perform "other functions of permanent missions as set forth in article 7". In his opinion, only the functions referred to in sub-paragraphs (b) and (d) of article 7 were functions of permanent observer missions. Similarly, with regard to the facilities, privileges and immunities of permanent observer missions referred to in article 60, he did not consider it possible to grant such missions the same rights as permanent missions.

The meeting rose at 12.55 p.m.

1044th MEETING

Wednesday, 6 May 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227)

[Item 2 of the agenda]

(continued)

Article 0 (Use of terms) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 0 in the Special Rapporteur's fifth report (A/CN.4/227).

2. Sir Humphrey WALDOCK said he agreed with Mr. Ushakov that the fact that permanent observer missions did not fulfil all the functions of a permanent mission did not mean that they were not representative in character. The difference was that the representative character of permanent observer missions as presented by the Special Rapporteur was unilateral, since they were invested with representative character only by the sending State, whereas that of permanent missions was

¹¹ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10.

bilateral, since their representative character was derived from both the sending State and the international organization. He could accept Mr. Ushakov's notion that permanent observer missions were representative in character, for the simple reason that, on any view, they were invested with authority from the sending State to represent it in the performance of some functions, even if they were of a relatively minor character. The general principles underlying the position of permanent observer missions were, however, far from clear and would require further study; he had strong reservations on the question whether representation of a permanent observer mission to an organization could be established on a purely multilateral basis. The memorandum sent by the Legal Counsel to the Acting Secretary-General of the United Nations on that subject on 22 August 1962¹ seemed to indicate that although permanent observers were, in fact, present at United Nations meetings, they did not have an officially recognized status. In the case of the smaller international organizations, such as the Council of Europe, the establishment of permanent observer missions was subject to the organization's approval, but the procedure followed in the United Nations seemed to be much less formal. He would not go into the matter further at the present time, since the real difficulties would arise in connexion with the later articles.

3. The CHAIRMAN, speaking as a member of the Commission, said that in his view the Special Rapporteur had been right in ascribing a representative character to permanent observer missions, since if they were not representative, in the sense that they possessed official authorization from the sending State to be present at meetings of the international organization, and if they were expected merely to perform the functions of a post office, it would surely be unnecessary to refer to them at all in the draft articles. Their exact nature would, however, be brought out more clearly when the Commission took up the more substantive articles, in particular articles 51 and 52. He agreed with Mr. Rosenne, therefore, that at the present stage article 0 should be referred to the Drafting Committee, whose attention should be drawn to the points made during the debate.

4. Mr. YASSEEN said he considered the representative character of a permanent observer mission to be essential, since it was a constituent element of the mission. It was also evident that the mission was linked both with the State it represented and with the international organization to which it was sent. Nevertheless, he was not sure that that constituent element should be taken into account in the definition. He agreed with Mr. Ushakov that it was the mission itself, not the observers, that should be described as permanent. Like the Chairman, he thought that article 0 should be referred to the Drafting Committee.

5. Mr. ROSENNE, referring to Mr. Ago's suggestion at the previous meeting that the words "permanent

observer" in sub-paragraph (b) should be replaced by the words "head of the permanent observer mission", said that at the present stage in the discussion, it would be better to follow as closely as possible the wording of article 1 (e), which defined a "permanent representative"² though he agreed that subsequently that definition would probably have to be revised.

6. Mr. CASTRÉN said he supported the Chairman's proposal to refer article 0 to the Drafting Committee. With regard to the use of the expression "representative character", which had been discussed at the previous meeting, he was quite prepared to recognize that a permanent observer mission possessed that character by virtue of the fact that it had been sent by a State to an international organization; but he was not sure that it was necessary to say so. Like Mr. Ramangasoavina, he thought the expression could be omitted, since the representative character of the mission would still be implicitly recognized.

7. Mr. BARTOŠ said he would not object to article 0 being referred to the Drafting Committee, but he thought it necessary first to settle the awkward question of the relationship between that article and article 52, since paragraph 2 of the latter provision referred to functions of permanent observer missions other than liaison functions. That was a matter of substance and he asked the Commission to bear his comment in mind when it came to consider article 52. He might submit a specific proposal concerning that article.

8. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said that Mr. Nagendra Singh and Mr. Ramangasoavina had rightly pointed out that the Commission could not ignore permanent observer missions, because the institution existed. Sir Humphrey Waldock had reminded the Commission that the Legal Counsel, in his memorandum of 22 August 1962, while acknowledging that permanent observers were present at United Nations meetings, had indicated that they did not have an officially recognized status. It was therefore necessary to give a definition of permanent observer missions which would establish their legal status and hence the facilities, privileges and immunities to which they were entitled. In that connexion, it was significant, as he had pointed out in his commentary to article 61 (A/CN.4/227), that the Supreme Court of the State of New York, in *Pappas v. Francini*, while noting that observers were not covered by the Headquarters Agreement of the United Nations, had recognized their representative character and had found that that was a reason for granting them functional immunity.

9. The majority of the members of the Commission seemed prepared to recognize the "representative character" of permanent observer missions, though there were some differences of opinion about the precise meaning of that expression and the desirability of referring to it in the definition. It appeared to be generally agreed that the institution of permanent observer missions should be

¹ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 190, para. 169.

² *Op. cit.*, 1968, vol. II, p. 196.

regulated in the draft articles, provided that it was possible to strike a proper balance.

10. With regard to the drafting, Mr. Ago had proposed that the term "permanent observer" in sub-paragraph (b) should be replaced by the words "head of the permanent observer mission" and a similar change had been suggested in sub-paragraph (e) of article 1, where the term "permanent representative" was defined. As Special Rapporteur he did not consider such uniformity desirable, because the usage of governments tended to vary. Not all of them might be prepared to accept the word "head"; his own Government, for example, had a "permanent representative" to the League of Arab States. He suggested that the Commission should obtain the views of governments and the specialized agencies before coming to a decision.

11. He agreed with Mr. Ushakov that the adjective "permanent" in sub-paragraph (a) should qualify the word "mission".

12. Mr. Castrén's suggestion that the article should describe in detail the function and purpose of permanent observer missions should be taken up by the Drafting Committee in connexion with articles 51 and 52.

13. He assured Mr. Ustor that it was his intention to draft articles based on common characteristics, applicable to both representatives and observers.

14. He agreed with Mr. Albónico that it was necessary to specify the exact powers and functions of permanent observer missions, as opposed to those of permanent missions.

15. In conclusion, he wished once again to emphasize the importance of receiving the views of governments before the expiry of the term of office of the present members of the Commission.

16. Mr. YASSEEN said that the debate, and especially the Special Rapporteur's statement, had shown that the Commission should keep to the method it usually followed with regard to terminology: it should wait until it had advanced further in its consideration of the substantive provisions.

17. Mr. USHAKOV said he agreed with Mr. Yasseen and hoped that the decision to refer the article to the Drafting Committee would be interpreted in that sense. Moreover, article 0 in its existing form did not define all the terms used in the subsequent articles, whereas article 1 contained a complete list of definitions. In his view, article 0 needed to be expanded.

18. Mr. TSURUOKA said he supported Mr. Yasseen's view. If the Commission referred draft article 0 to the Drafting Committee, that Committee would have to wait until the ideas now under discussion became much clearer; it could do no useful work until then.

19. Mr. ROSENNE said that Mr. Ushakov had raised a question of principle; it was his understanding that article 0 would be reported by the Drafting Committee as an addendum to article 1, not as part of a separate instrument, and that the articles now being discussed would be included in the same instrument as articles 1-50.

20. Mr. BARTOŠ said he fully shared Mr. Tsuruoka's views. It was essential that the Drafting Committee should consider article 0 not in isolation, but together with the succeeding articles 51 and 52.

21. Mr. NAGENDRA SINGH said that it was also his understanding that all the draft articles were intended to form a complete whole and could not be divided into two separate instruments.

22. Mr. EL-ERIAN (Special Rapporteur) said that the draft articles now under discussion were designed to supplement those on permanent missions, which formed the main part of the topic.

23. The CHAIRMAN suggested that the Commission should refer article 0 to the Drafting Committee, with the recommendation that final consideration should be deferred until more progress had been made with the substantive articles.

It was so agreed.³

ARTICLE 51

24.

Article 51

Establishment of permanent observer missions

Non-member States may establish permanent observer missions to the Organization for the performance of the functions set forth in article 52.

25. Mr. EL-ERIAN (Special Rapporteur), introducing article 51, said that the article contained a general rule under which non-member States might establish permanent observer missions to effect the necessary association with an international organization, short of full membership. It was assumed that the organization concerned was one of universal character within the meaning of article 1 (b). The same assumption could not be made in the case of a regional organization, though of course it might be of interest to a non-member to establish an observer mission to such an organization. He understood that there were observers to the Council of Europe, for example. Unfortunately, information had not been provided by the regional organizations; it had only been received from the specialized agencies and the International Atomic Energy Agency.

26. For different reasons, certain countries, notably Switzerland and Western Samoa, chose not to be members of the United Nations; but they did have observer missions. With regard to the "divided countries"—Germany, Korea and Viet-Nam—which had been excluded from the 1955 "package deal" and thereby from United Nations membership, he noted that some of their governments had gained admission to the specialized agencies and had thus been able to establish observer missions to the United Nations. That had been made possible by the practice of admitting observers only from States that were members of one or more specialized agencies or parties to the Statute of the International

³ For resumption of the discussion, see 1061st meeting, para. 56.

Court of Justice; but as a result of that practice, the other governments of the divided countries were prevented from establishing observer missions.

27. As explained in paragraph (4) of the commentary to articles 51 and 52, the institution of observer missions could be useful to very small countries which did not have the necessary resources to bear all the burdens of membership of the United Nations and were interested in some kind of association short of full membership.

28. Mr. CASTRÉN observed that article 51 reproduced, *mutatis mutandis*, the text of article 6 of the draft,⁴ on the establishment of permanent missions by member States, the principle of which was based on well established practice and had been easily accepted by the Commission at its twentieth session. Article 51, however, applied to the case of non-member States, and although the point of view adopted by the Special Rapporteur was backed by solid arguments—in particular the fact that it was generally useful for the organization and the States concerned to maintain permanent contact, especially in view of the universal character of the organization—it might be asked whether, in certain cases, the organization would not prefer not to grant freedom of access to a non-member State, even as an observer: for example, in the case of a member State which had been excluded from the organization. It was true that much would depend on the definition of the functions of permanent observer missions and the scope of the facilities, privileges and immunities granted to them, to which matters the Commission would revert later. In any case, the present practice of international organizations was not to grant non-member States the right to establish permanent observer missions—at least not without the tacit consent of the organization.

29. He did not believe, either that the question of the representation of very small States could be settled by the establishment of permanent observer missions; moreover, it was not only small States that were involved, but also several other classes of States which were in special situations. For all reasons, he would hesitate to give unreserved support to the Special Rapporteur's very liberal proposal for article 51. Perhaps it should be amplified by adding the words "in so far as this is provided for in the relevant rules of the organization", as suggested by the Netherlands Government in its comments on article 6 (A/CN.4/221), and adding to that phrase the words "or with the assent of the competent organ of the organization". The competent organ would normally be the general assembly of the organization concerned, and as stated in paragraph (5) of the commentary to article 3 of the draft, the expression "relevant rules of the organization" also included the practice prevailing in that organization.

30. Mr. REUTER said that the intentions which had led to the inclusion of article 51 in the draft were praiseworthy, in particular the concern for universality, which was in accordance with the spirit of the Charter and of the constituent instruments of the specialized agencies.

However, article 51 raised basic problems which affected the whole draft. For the words "may establish" did not necessarily convey the idea of a rule imposing an obligation on the organization, and it might therefore be asked whether the convention the Commission was drafting laid down rules for the organization or for the host State and third States bound by the convention. The second assumption seemed to be the correct one, but if the Commission decided that it was to the organization that the rules in the draft articles applied, three difficulties would arise. First, it was hard to see how an organization could be bound by a convention to which it was not a party as a legal person. Secondly, since according to article 3 the application of the articles was without prejudice to any relevant rules of the organization and it was agreed that those rules included practice, there was a conflict between article 51 and article 3. Thirdly, the organizations themselves might not agree that any non-member State whatever, for example, member States which had been excluded from the organization or entities having the character of States which had been created by civil wars, could establish a permanent observer mission to them.

31. Moreover, it was not satisfactory to offer States whose existence was not challenged, but which were not yet members of the organization in spite of their desire for membership, a bastard formula for participation in the form of permanent observer missions. Consequently, since the draft articles could hardly create an obligation for the organization, it would be more logical to add to article 51 the words "with the assent of the organization", as Mr. Castrén had proposed. That would at the same time solve other problems, in particular the problem of the representative character of a mission raised by sub-paragraph (a) of article 0; for since only States whose permanent observer missions had been accepted by the organization would benefit by the convention, the representative character would be conferred by the organization's assent. The problem of the functions of permanent observer missions, which was raised in article 52, would also be solved if the mission were only established with the assent of the organization. It was impossible to provide in the draft articles for a régime which would cover all the functions of permanent observers, but those functions would take on a representative character merely by virtue of the fact that the organization had recognized them.

32. He would not take up the question of the "micro-States", which was a very special one.

33. Mr. USHAKOV said he had no fault to find with article 51, which applied to a situation entirely similar to that dealt with in article 6 of the draft. It was self-evident that a member State which established a permanent mission in accordance with article 6 could only do so if the relevant rules, and hence the established practice, permitted it. That was laid down in articles 3 and 4 of the draft which, it must be emphasized, were general provisions applicable to the whole draft and consequently to article 51. In the absence of any rules or practice, non-member States would not be entitled to establish permanent observer missions, any more than member States

⁴ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 199.

would be entitled to establish permanent missions. If the Commission considered that the scope of articles 3 and 4 was not sufficiently wide, it would have to reformulate a general rule applicable to the permanent missions established by member States and to the permanent observer missions of non-member States; but article 51 in its present form was just as correct as article 6.

34. Sir Humphrey WALDOCK said that he would have difficulty in accepting the rule in article 51 without some recognition of the position of the organization as the body which was to receive the observer mission.

35. In his view, the case now under consideration was fundamentally different from that of the permanent representative, which was dealt with in article 6. The permanent representative represented a member State which was either a founder member or had gone through the admission procedure of the organization concerned. Under the present text, the State concerned would not have been accepted in any way, either by the organization or by its members, for relations with the organization. It was therefore necessary to introduce into the text of article 51 some element indicating the need for the assent of the organization.

36. The issue was an important one. If no reference were included to the consent of the competent organ of the organization concerned, who would decide the matter in controversial cases? The only possible answer to that question was that the decision would have to rest with the secretariat, perhaps in consultation with the host State, and it was most undesirable for a secretariat to have to take the decision on such a controversial question. A similar problem had arisen in connexion with the law of treaties in regard to participation in multilateral treaties, and the position taken repeatedly by the Secretary-General had been that responsibility for the decision should not be placed on his shoulders.

37. A formal statement in the Legal Counsel's memorandum of 22 August 1962⁸ clearly indicated that there was a procedure of acceptance for observer missions; no credentials were required, but there was a definite process of admission, as a result of which the appropriate facilities were extended to the mission concerned. It was also clear from that memorandum that, for the purpose of establishing an observer mission, certain qualifications were required, such as membership of one of the specialized agencies. The question who was to determine whether the observer mission was to be admitted to participate in that capacity in the work of the organization was therefore inescapable, and it could only be settled by adding to the text of article 51 some formula on the lines proposed by Mr. Castrén and Mr. Reuter.

38. Mr. ROSENNE said that, to his regret, he could not accept article 51 as it stood or the ideas underlying it, whether they were put forward *de lege lata* or *de lege ferenda*. His reasons were similar to those given by Mr. Castrén, Mr. Reuter and Sir Humphrey Waldo.

39. Paragraph (2) of the commentary showed that

those ideas had a direct relationship with the provisions of article 1 (b) and article 2. At the twentieth session, he had abstained from voting on those provisions, for the reasons he had given at the 973rd and 986th meetings.⁹

40. The discussion of article 1 (b) and article 2 in the Sixth Committee in 1968⁷ and the comments by governments (A/CN.4/221 and Add.1) showed that difficulties regarding those provisions were widely shared, and that the provisions of articles 3 and 4 probably did not provide a sufficient safeguard.

41. In the circumstances, prudence was indicated at the present stage, since article 1 (b) and article 2 would probably not emerge from the second reading, or from a future conference of plenipotentiaries, in the form in which they had been adopted at the Commission's twentieth session.

42. The position with regard to article 6 was similar; that article had been subjected to criticisms similar to those made against article 1 (b) and article 2.

43. He thought that much more could be extracted from the Secretariat study on "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities"⁸ than had hitherto been suggested in the course of the discussion. That was particularly true of the Legal Counsel's memorandum of 22 August 1962.⁹ From that statement of the position at United Nations headquarters, it was clear that observers were accepted only from non-member States which were full members of one or more specialized agencies and were generally recognized by Members of the United Nations. The passages of the Secretariat study relating to observers of non-member States sent to specialized agencies¹⁰ were equally clear.

44. In the circumstances, the question of the criteria for determining what constituted a "non-member State" would arise, and he thought it would prove even more difficult to define a "non-member State" than a "State". In that connexion he recalled that the Commission had consistently refused to define the term "State", whatever the context or situation in which that problem had arisen in the past.

45. It was possible to conceive of a situation in which an entity claimed to be a State, but had not succeeded in having its claim recognized by the Security Council in the exercise of its powers under Article 4 (2) of the Charter. It would surely be unthinkable that such an entity should send an observer to the United Nations.

46. The commentary to article 51 did not shed any light on the reasons why the Special Rapporteur pro-

⁶ Op. cit., 1968, vol. I, pp. 170-171, paras. 7-12, and p. 245, para. 20.

⁷ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84, document A/7370, paras. 23-25.

⁸ See *Yearbook of the International Law Commission*, 1967, vol. II, p. 154.

⁹ *Ibid.*, p. 190, para. 169.

¹⁰ *Ibid.*, pp. 203-204.

⁸ See *Yearbook of the International Law Commission*, 1967, vol. II, p. 190, para. 169.

posed to jettison, without suggesting any alternative, the two criteria set out in the Legal Counsel's memorandum of 22 August 1962, which had always been followed in practice.

47. He noted that article 60 would make articles 22 to 44¹¹ applicable to permanent observer missions. Those articles imposed certain obligations on the organization concerned. Leaving aside the question whether organizations would become parties to the draft convention under discussion, it should be noted that the implementation of article 60 by an organization would create, for its executive head and secretariat, precisely those difficulties which had made it impossible for the Secretary-General of the United Nations to apply the "all States" formula in the exercise of his functions as depositary for multilateral treaties.

48. The views he had expressed would govern his attitude to articles such as article 51, unless the representative of the Secretary-General could authoritatively state that his misgivings were unfounded. For those reasons the Commission should adopt a cautious attitude, similar to that which it had adopted in 1965 on the question of participation in treaties.

49. The New York telephone directory showed how many entities claimed to have observer missions which were unknown to the United Nations internal directory. Observer status could only be created by the practice of the competent organs of the organization concerned or by its constituent instrument.

50. As to the problem of "micro-States" mentioned in paragraph (4) of the commentary to article 51, the Commission was not empowered to examine a question that was at present under consideration by a committee of experts appointed by the Security Council.

51. He thought that an amendment of the text on the lines suggested by Mr. Castrén and Mr. Reuter would change the whole concept of article 51 and was likely to make its provisions much more acceptable to him, but he reserved his position until he saw an amended text.

Organization of work

52. The CHAIRMAN announced that he had received a telegram from Mr. Bedjaoui confirming that he proposed to attend the Commission's session from 11 May and suggesting that some time might be devoted to his third report on succession of States in respect of matters other than treaties (A/CN.4/226). He reminded the Commission of its decision at the previous session to give priority to the topic of relations between States and international organizations, followed by State responsibility, succession in respect of treaties and, if time permitted, succession in respect of matters other than treaties.¹²

The meeting rose at 1 p.m.

¹¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, pp. 4 et seq.

¹² *Ibid.*, p. 32, para. 93.

1045th MEETING

Friday, 8 May 1970, at 10.15 a.m.

Chairman: Mr. Richard D. Kearney

Present: Mr. Ago, Mr. Albonico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Nagendra Singh, Mr. Raman-gasoavina, Mr. Rosenne, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227)

[Item 2 of the agenda]

(resumed from the previous meeting)

ARTICLE 51 (Establishment of permanent observer missions) (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of article 51.

2. Mr. BARTOŠ said that the first point to settle was whether the convention which the Commission was preparing would have the effect of obliging the organization to grant every non-member State the right to send a permanent observer mission to it. If the convention was to be open for signature or accession by the organizations concerned, the question would not arise, but if only States could become parties to it, article 51 would establish a unilateral privilege for States, since they would in any case be able to impose their presence on the organization. Moreover, the convention would place non-member States in a more favourable situation than member States, which were obliged to fulfil certain conditions in order to become members of the organization. Consequently, although he was in agreement with the general principle laid down in article 51, he thought it should be decided that the right thus granted to non-member States could be exercised only under the conditions provided for in the rules of the organization or with the consent of the organization.

3. Mr. NAGENDRA SINGH said that the statement of the rule contained in article 51 was certainly not incorrect, if taken together with Mr. Ushakov's interpretation of articles 3 and 4¹ regarding the overriding character of the rules of the organization concerned. It was a fact that a number of specialized agencies had made provision for observers.

4. Nevertheless, he was inclined to support Mr. Castrén's proposal to add a concluding proviso stating that the consent of the organization was required. The main argument in favour of such a proviso was that it would state at once, and at one point in the draft, what was the correct position.

¹ See previous meeting, para. 33.